Manitoba Residential
Tenancies Commission

Annual Report
2009

Manitoba

MINISTER OF
FAMILY SERVICES AND CONSUMER AFFAIRS

Room 357
Legislative Building
Winnipeg, Manitoba CANADA
R3C 0V8

His Honour the Honourable Philip Lee, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235, Legislative Building
Winnipeg, Manitoba
R3C 0V8

May It Please Your Honour:

I have the privilege of presenting for the information of your Honour, the Annual Report of the Residential Tenancies Commission on the administration of *The Residential Tenancies Act* for the year ending December 31, 2009.

Respectfully submitted,

Gord Mackintosh

Manitoba

Family Services and Consumer Affairs

Residential Tenancies Commission
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Honourable Gord Mackintosh
Minister of Family Services and Consumer Affairs
Room 357, Legislative Building
Winnipeg, Manitoba
R3C OV8

Dear Sir:

I have the honour of submitting the Residential Tenancies Commission Annual Report on the administration of *The Residential Tenancies Act* for the year ending December 31, 2009.

Respectfully submitted,

A. L. Kussin
Chief Commissioner
Residential Tenancies Commission

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INTRODUCTION

The Residential Tenancies Commission is a quasi-judicial, specialist tribunal that hears appeals from decisions and orders of the Director of the Residential Tenancies Branch under *The Residential Tenancies Act*.

The Residential Tenancies Commission consists of:

- The Chief Commissioner - a full-time position; appointed for up to a five-year term, located in Winnipeg.
- Deputy Commissioners – nineteen part-time positions and one full-time position; may exercise the powers and perform the duties of the Chief Commissioner; appointed for a two-year term; from Winnipeg, Brandon and Thompson.
- Panel members – forty-seven panel members – approximately half representing the views of the landlords, the others the views of the tenants; from Winnipeg, The Pas, Thompson and Brandon.

The Commission may conduct hearings orally, in person or by telephone, in writing or partly orally and partly in writing. Hearings outside of Winnipeg are held at the nearest judicial district.

Hearings are before a panel of three consisting of one landlord representative, one tenant representative and a neutral commissioner which is either the Chief Commissioner or one of the deputies. Hearings are chaired by the neutral commissioner. The neutral commissioner also casts the deciding vote if there is a tie.

The Residential Tenancies Commission decisions can be appealed to the Court of Appeal, but only on a question of law or jurisdiction. A Court of Appeal judge must grant leave or permission to appeal. Section 179 of *The Residential Tenancies Act* dealing with rent regulation states that *"No appeal lies from a decision or order of the commission made in a matter arising under Part 9."* The Residential Tenancies Commission's decision here is final.

The Residential Tenancies Act was amended in June 2009. The key changes affecting the Commission are as follows:

Correction power

The Residential Tenancies Commission is authorized to correct or amend typographical, numerical or other errors in their orders.

Single Commissioner Hearings

To streamline hearings before the Commission, the amendments gave authority for certain matters to be heard by the Chief Commissioner or a Deputy Chief Commissioner when sitting as a single commissioner, instead of a panel of three.

The Residential Tenancies Act requires the Chief Commissioner to submit a report on the administration of the Act to the Minister within six months after the end of each fiscal year. The reporting period for this report is the 2009 calendar year. Figures for the 2008 calendar year have also been provided for purposes of comparison. The statistics are broken down by activity, i.e. security deposits, repairs, utilities.

APPEAL ACTIVITY SUMMARY

PARTS 1 – 8 OF *THE RESIDENTIAL TENANCIES ACT*

Parts 1 – 8 of *The Residential Tenancies Act* deal with all residential landlord and tenant matters, except for rent regulation. Table 1 provides a statistical summary of the activities of the Residential Tenancies Commission under Parts 1 – 8 of the legislation. During 2009 the Commission received 415 appeals under Parts 1 – 8 of *The Residential Tenancies Act*. The Commission received 353 appeals of orders resulting from Branch hearings and 25 appeals of claims for security deposit or less. The remaining 37 appeals were related to various other issues such as orders to repair, non-payment of utilities, disputes over locks and doors and seizure of tenants' property.

The Commission processed 515 cases before year-end. The Commission confirmed or upheld the Residential Tenancies Branch's decisions in 152 instances. The Commission varied 214 of the Branch's decisions. These variations sometimes occurred because the Commission received information from the parties at the appeal hearing that the Branch did not have before issuing its decision. The Commission rescinded 66 decisions of the Branch. Another 54 appeals were either rejected by the Commission or withdrawn by the appellant. Most rejections are caused by late appeals or appeals without a filing fee. Withdrawals are usually due to either: (1) the affected parties being able to reach a settlement; or (2) the appellant changing his or her mind and no longer wishing to continue with the appeal. Four hearings were cancelled and there were 20 motions to extend time to appeal denied. There were five appeals pending at the end of 2009.

In 2009, there were 32 applications to the Court of Appeal for leave to appeal. One was granted. The Court of Appeal denied leave on 25 applications. Three applications for leave were withdrawn. Three applications for leave to appeal were still pending at the end of 2009.

TABLE 1 - APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT*

	January 1, 2008 - December 31, 2008 (Cases)	January 1, 2009 - December 31, 2009 (Cases)
ABANDONMENT OF PERSONAL PROPERTY		
Carried forward from previous year	0	0
Appeals Received	1	1
TOTAL	1	1
Decisions Varied	1	1
TOTAL APPEALS CLOSED	1	1
ACTIVE	0	0
CLAIM FOR SECURITY DEPOSIT OR LESS		
Carried forward from previous year	38	20
Appeals Received	40	25
TOTAL	78	45
Decisions Confirmed	21	16
Decisions Varied	24	16
Decisions Rescinded	5	4
Appeals Withdrawn/Rejected	4	1
Cancelled	1	0
Motion to Extend Time Denied	3	2
TOTAL APPEALS CLOSED	58	39
ACTIVE	20	6
DISPUTES		
Carried forward from previous year	8	0
Appeals Received	0	0
TOTAL	8	0
Decisions Varied	4	0
Decisions Rescinded	1	0
Appeals Withdrawn/Rejected	2	0
Cancelled	1	0
TOTAL APPEALS CLOSED	8	0
ACTIVE	0	0

TABLE 1 - APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT*

	January 1, 2008 - December 31, 2008 (Cases)	January 1, 2009 - December 31, 2009 (Cases)
DISTRAINT AND LOCKOUT		
Carried forward from previous year	1	0
Appeals Received	1	2
TOTAL	2	2
Decisions Confirmed	1	2
Decisions Rescinded	1	0
TOTAL APPEALS CLOSED	2	2
ACTIVE	0	0
ENFORCEMENT		
Carried forward from previous year	0	1
Appeals Received	1	2
TOTAL	1	3
Decisions Confirmed	0	2
Decisions Rescinded	0	1
TOTAL APPEALS CLOSED	0	3
ACTIVE	1	0
HEARINGS		
Carried forward from previous year	140	144
Appeals Received	379	353
TOTAL	519	497
Decisions Confirmed	160	120
Decisions Varied	117	185
Decisions Rescinded	45	59
Appeals Withdrawn/Rejected	38	40
Cancelled	3	2
Motion to Extend Time Denied	11	18
Appeals Pending	1	4
TOTAL APPEALS CLOSED	375	428
ACTIVE	144	69

TABLE 1 - APPEALS

STATISTICAL SUMMARY FOR MANITOBA
PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT*

	January 1, 2008 - December 31, 2008 (Cases)	January 1, 2009 - December 31, 2009 (Cases)
REPAIRS		
Carried forward from previous year	8	12
Appeals Received	22	23
TOTAL	30	35
Decisions Confirmed	12	12
Decisions Varied	2	12
Decisions Rescinded	1	1
Cancelled	0	1
Appeals Withdrawn/Rejected	2	5
Motion to Extend Time Denied	1	0
Appeals Pending	0	1
TOTAL APPEALS CLOSED	18	32
ACTIVE	12	3
UTILITIES		
Carried forward from previous year	5	1
Appeals Received	2	9
TOTAL	7	10
Decisions Confirmed	5	0
Decisions Rescinded	0	1
Appeals Withdrawn/Rejected	0	8
Cancelled	1	1
TOTAL APPEALS CLOSED	6	10
ACTIVE	1	0

TABLE 1 - APPEALS

STATISTICAL SUMMARY FOR MANITOBA
PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT*

	January 1, 2008 - December 31, 2008 (Cases)	January 1, 2009 - December 31, 2009 (Cases)
TOTAL APPEALS		
Carried forward from previous year	200	178
Appeals Received	446	415
TOTAL	646	593
Decisions Confirmed	199	152
Decisions Varied	148	214
Decisions Rescinded	53	66
Appeals Withdrawn/Rejected	46	54
Cancelled	6	4
Motion to Extend Time Denied	15	20
Appeals Pending	1	5
TOTAL APPEALS CLOSED	468	515
ACTIVE	178	78

Note: The figures for 2008 vary from the previous year's report. These variances are due to updates and revisions made to the data as files were processed and more complete information became available.

APPEAL ACTIVITY SUMMARY

PART 9 OF *THE RESIDENTIAL TENANCIES ACT*

In 2009, the Commission received appeals for 94 buildings affecting 1,245 rental units on orders the Residential Tenancies Branch issued under Part 9 of *The Residential Tenancies Act*.

The Commission processed appeals on orders for 106 buildings affecting 1,311 rental units in the 2009 calendar year. The Commission upheld orders on 61 units in 15 buildings and varied orders on 1,091 units in 43 buildings. These variations sometimes occurred because the Commission received information at the appeal hearing that the Branch did not have before issuing its decision. Appeals in 48 other buildings affecting 159 units were either rejected by the Commission or withdrawn by the appellant.

There is no appeal to the Court of Appeal on rent regulation matters.

TABLE 2 - APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PART 9 OF *THE RESIDENTIAL TENANCIES ACT*

	January 1, 2008 – December 31, 2008		January 1, 2009– December 31, 2009	
	Bldgs.	Units	Bldgs.	Units
APPLICATION - LAUNDRY INCREASE				
Carried forward from previous year	1	1	0	0
Appeals Received	0	0	1	2
TOTAL	1	1	1	2
Decisions Confirmed	0	0	1	2
Appeals Withdrawn/Rejected	1	1	0	0
ACTIVE	0	0	0	0
APPLICATION - REHABILITATION				
Carried forward from previous year	0	0	1	2
Appeals Received	1	2	4	15
TOTAL	1	2	5	17
Decisions Confirmed	0	0	1	1
Appeals Withdrawn/Rejected	0	0	3	5
ACTIVE	1	2	1	11
APPLICATION - RENT INCREASE ABOVE GUIDELINE				
Carried forward from previous year	70	243	25	398
Appeals Received	76	529	86	1,202
TOTAL	146	772	111	1,600
Decisions Confirmed	18	95	10	30
Decisions Varied	21	154	39	1074
Appeals Withdrawn/Rejected	82	125	44	153
ACTIVE	25	398	19	343
TENANT OBJECTIONS TO GUIDELINE OR LESS				
Carried forward from previous year	0	0	1	1
Appeals Received	1	1	1	1
TOTAL	1	1	2	2
Decisions Confirmed	0	0	1	1
Decisions Varied	0	0	1	1
ACTIVE	1	1	0	0

TABLE 2 - APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PART 9 OF *THE RESIDENTIAL TENANCIES ACT*

	January 1, 2008– December 31, 2008		January 1, 2009 – December 31, 2009	
	Bldgs.	Units	Bldgs.	Units
APPLICATION - WITHDRAWAL OF SERVICE				
Carried forward from previous year	0	0	1	1
Appeals Received	3	217	1	23
TOTAL	3	217	2	24
Decisions Confirmed	0	0	1	23
Decisions Varied	2	216	0	0
Appeals Withdrawn/Rejected	0	0	1	1
ACTIVE	1	1	0	0
COMPLIANCE				
Carried forward from previous year	14	27	6	55
Appeals Received	6	63	1	2
TOTAL	20	90	7	57
Decisions Confirmed	3	3	1	4
Decisions Varied	9	30	3	16
Appeals Withdrawn/Rejected	2	2	0	0
ACTIVE	6	55	3	37
TOTAL APPEALS				
Carried forward from previous year	85	271	34	457
Appeals Received	87	812	94	1,245
TOTAL	172	1,083	128	1,702
Decisions Confirmed	21	98	15	61
Decisions Varied	32	400	43	1,091
Appeals Withdrawn/Rejected	85	128	48	159
ACTIVE	34	457	22	391

Note:

The figures for 2008 vary from the previous year's report. These variances are due to updates and revisions made to the data as files were processed and more complete information became available.

TABLE 3

APPEAL HEARINGS BY JUDICIAL DISTRICT

RESIDENTIAL TENANCIES COMMISSION

	January 1, 2008 – December 31, 2008	January 1, 2009 – December 31, 2009
Winnipeg	423	519
Altona	0	1
Beausejour	0	1
Brandon	13	7
Dauphin	0	1
Morden	3	2
Neepawa	3	0
Portage la Prairie	2	2
Russell	0	3
Ste. Anne	1	0
Selkirk	3	4
Steinbach	2	3
The Pas	0	2
Thompson	2	2
TOTAL	452	547

TABLE 4

APPLICATIONS FOR LEAVE TO APPEAL

	January 1, 2008– December 31, 2008	January 1, 2009– December 31, 2009
Granted	0	1
Denied	11	25
Withdrawn	2	3
Pending	9	3
TOTAL	22	32

SIGNIFICANT DECISIONS

1. Significant Decisions

The landlord filed a claim against the tenant for compensation for rent, damages, cleaning expenses, utility bills, advertising expenses and costs. The Branch awarded the landlord compensation of $3,152.50; the tenant appealed that decision to the Commission.

The tenant entered into a 12 month tenancy agreement. She gave the landlord 30 days notice that she was moving out of the rental unit five months ahead of the time her tenancy agreement expired. She claimed that she moved out of the rental unit because of an architecturally designed opening in a hallway on the second floor that was large enough that she feared someone could fall through to the first floor. She claimed the opening was dangerous and the landlord refused to fix it and this justified her vacating the premises prior to the expiry of the tenancy agreement.

The Commission upheld the Branch's finding that the tenant failed to establish that she had cause to justify early termination of the tenancy agreement. Consideration was given to section 89 of *The Residential Tenancies Act* (the Act) which sets out the circumstances where the condition of the rental unit could lead to the unilateral termination of a tenancy agreement. Subsection 89(1) of the *Act* provides that a tenant may give the landlord a notice of termination if the landlord contravenes or fails to comply with certain provisions of the *Act* or where the landlord breaches a material term of the tenancy agreement. Subsection 89(4) of the *Act* allows for termination effective immediately where a landlord's contravention or breach makes a rental unit uninhabitable.

The Commission found that the tenant did not provide any credible evidence that the landlord had breached any material term of the tenancy agreement or failed to act under one of its obligations under the *Act*. Furthermore, the tenant did not provide any evidence to show that the rental unit was "uninhabitable" as contemplated under subsection 89(4) of the *Act*. In fact, the evidence was that the tenant moved into the rental unit knowing that the architectural feature was present, without any written assurances that the landlord would have the second floor landing sealed, and lived in the rental unit for seven months

without incident. In addition, when the owner attempted to have contractors come to the suite to assess the situation, the tenant did not make the rental unit accessible. Nor did the tenant contact any city officials or the Branch about her safety concerns.

The Commission upheld the Branch's award of compensation of rent to the landlord from the day the tenant moved out of the rental unit until a new tenant moved in, that is for one and a half months. The balance of the Branch's findings were also upheld. The landlord's claim for compensation for damages, cleaning expenses and utility bills were dismissed as unproven. The landlord's claim for management fees were considered to be a cost of doing business and were not properly claimable against the tenant. The landlord was awarded compensation for the expense of advertising the rental unit to find a new tenant, and was awarded costs against the tenant.

The tenant sought leave to appeal the decision of the Commission to the Court of Appeal and; leave to appeal was denied by the Court of Appeal.

2. Significant Decisions

A hearing was held to determine the following matters:

- The tenant's entitlement to moving costs.
- Whether the tenant had a right of first refusal to rent the rental unit following renovations done by the landlord.
- Whether the landlord held the tenant's security deposit.

The Branch ordered the landlord to pay the tenant compensation of $522.25 and ordered the landlord to return the security deposit and accrued interest to the tenant. The landlord appealed the Orders of the Branch to the Commission.

The landlord served the tenant with a Notice of Termination which provided that the tenancy agreement was terminated because extensive renovations were needed. The tenant testified that she moved out of the rental unit on July 1, 2008. She said that she told the landlord verbally on three occasions that she wished to move back into the rental unit once the renovations were complete. As well, she said that she mailed the landlord a letter on June 2 or 3, 2008, advising in writing that she wished to exercise her right of first refusal. The tenant also called a witness who testified that she was present when the tenant wrote a letter to the landlord exercising her right of first refusal. Despite having made her intentions known to the landlord, she was advised by the resident caretaker on August 20, 2008, that the rental unit had been rented to someone else.

The tenant took the position that she ought to be entitled to exercise her right of first refusal, and also sought compensation for moving expenses. In addition, the tenant sought either the return of her security deposit, or to have it applied to a new tenancy agreement with the landlord in the event that she is entitled to, and does, exercise her right of first refusal.

The landlord representative denied that the tenant requested to exercise her right of first refusal either verbally or in writing. In addition, he denied that the tenant paid a security deposit at the beginning of the tenancy.

When a landlord terminates a tenancy agreement so that it can do renovations to the rental unit, subsection 99(6) of *The Residential Tenancies Act* (the *Act*) makes provision for a tenant to have a right of first refusal to rent the unit when the renovations are complete, and subsection 99(8) provides that a landlord shall not deprive a tenant of that right:

> **Tenant's right of first refusal: renovation**
>
> 99(6) Unless subsection (6.1) applies, when a tenant receives notice of termination for the purposes of renovation under clause (1)(b) and indicates in writing to the landlord, before vacating the unit, that he or she wishes to have a right of first refusal to rent the unit when the renovation is complete, the tenant has a right of first refusal to rent the unit at the lowest rent that would be charged to any other tenant for the same unit.
>
> ...
>
> **Landlord's obligation re right of first refusal**
>
> 99(8) A landlord shall not deprive a tenant of the benefit of a right of first refusal under subsection (6) or (7).

The Commission found that the tenant exercised her right of first refusal in accordance with subsection 99(6) of the *Act*, and found the landlord deprived her of the benefit of that right in violation of subsection 99(8) of the *Act*. Having made those findings, the Commission went on to consider what the appropriate remedy ought to be. Pursuant to its powers under subsections 154(1)3 and 154(3) of the *Act*, the Commission made the following orders:

- The tenant was granted a right of first refusal to rent the rental unit or another one bedroom unit of the same size located at the residential complex at the lowest rent that would be charged to any other tenant.
- The landlord was ordered to provide the tenant with written notice advising the tenant of the rental unit that will be made available to her and advising her of the amount of rent for the rental unit, which shall be the lowest rent that would be charged to any other tenant.

- The tenant was ordered to advise the landlord in writing whether she will be exercising her right of first refusal and moving into the rental unit.

The Commission accepted the tenant's evidence that she had paid a security deposit to the landlord at the beginning of the tenancy. The Commission made the following orders to deal with the security deposit in light of the tenant's right of first refusal:

- If the tenant exercises her right of first refusal and moves into the rental unit, the landlord may continue to hold the tenant's security deposit plus accrued interest in accordance with the requirements of the *Act*.
- If the tenant does not exercise her right of first refusal, the landlord shall return the security deposit plus accrued interest to the tenant.

With respect to the tenant's claim for moving and storage costs, subsection 99(3) of the *Act* obligates a landlord who has terminated a tenancy for the purposes of renovations to pay the tenant's reasonable moving expenses up to a maximum prescribed amount. The maximum amount, prescribed by section 21 of the *Residential Tenancies Regulation* is $350.00. The Commission was satisfied that the tenant incurred more than $350.00 in moving costs and ordered the landlord to pay the tenant moving costs of $350.00. The tenant was also awarded costs.

3. Significant Decisions

A landlord applied to the Residential Tenancies Branch for a rent increase of $10.00 per unit per month. The residential complex is a mobile home park that consists of 104 rental units. The Branch approved an increase of $7.00 per unit per month. One tenant appealed to the Commission.

The landlord representative advised the Panel that the landlord did not do regular advertising, but made donations to various groups to keep the name of the park in the community.

The Commission disallowed expenses for entertainment, promotion and donations to associations which it deemed were not primarily intended to increase the revenues of the property as per *Residential Rent Regulation* 8(2)(f) and 8(2)(g) which state as follows:

> The following shall not be included as operating expenses:
>
> ...
>
> (f) charitable or political donations;
>
> (g) the cost of entertainment and promotion that is not primarily intended to increase the revenues of the property;

After making the necessary adjustments, the Commission allowed the landlord an increase of $7.00 per unit per month.

The Public Interest Disclosure (Whistleblower Protection) Act

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The Act builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the Act may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counseling a person to commit a wrongdoing. The Act is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the Act, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the Act, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the Act, and must be reported in a department's annual report in accordance with Section 18 of the Act. The Residential Tenancies Commission has received an exemption from the Ombudsman under Section 7 of the Act. As a result any disclosures received by the Chief Commissioner or a supervisor are referred to the Ombudsman in accordance with the exemption.

The following is a summary of disclosures received by the Residential Tenancies Commission for the 2009 calendar year:

Information Required Annually (per Section 18 of the Act)	**January 1, 2009 to December 31, 2009**
The number of disclosures received, and the number acted on and not acted on. *Subsection 18(2)(a)*	**NIL**